

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-04-378
	§	C.A. No. C-07-350
MARTINDALE F. MCCLYMONT,	§	
Defendant/Movant.	§	

ORDER

On August 27, 2007, the Clerk received Movant Martindale F. McLymont's ("McLymont") motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 (D.E. 46),¹ as well as a motion to proceed *in forma pauperis*. (D.E.47.)

I. Order for Government to Respond and Briefing Schedule

It is now ORDERED that the United States answer McLymont's § 2255 motion not later than sixty days after the entry of this Order. It is further ORDERED that the United States provide, at the time of its answer, transcripts of all pertinent proceedings that are not already part of the record. Relevant affidavits, if any, are also to be filed with the answer.

Pursuant to Rule 5(d) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS (2006), McLymont may file a reply not later than thirty days after service of the government's answer.

II. Motion to Proceed *in forma pauperis*

McLymont has also filed an application to proceed *in forma pauperis*. (D.E. 47.) For purposes of filing fees, a motion filed under 28 U.S.C. § 2255 is essentially a continuation of the defendant's criminal case. See United States v. Cole, 101 F.3d 1076 (5th Cir. 1996) (characterizing

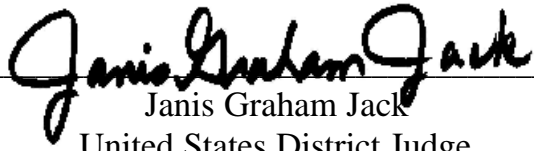
¹ Dockets entries refer to the criminal case, C-04-cr-378.

§ 2255 motion and indicating that it is not a civil action for purposes of the Prison Litigation Reform Act). In this district, no filing fee is required to file such a motion. Accordingly, there is no need for *in forma pauperis* status in this matter. McLymont's motion to proceed *in forma pauperis* (D.E. 47) is therefore DENIED AS MOOT.

III. Conclusion

As set forth above, the government is ordered to respond to McLymont's § 2255 motion and McLymont is entitled to file a reply. McLymont's motion to proceed *in forma pauperis* (D.E. 47) is DENIED AS MOOT.

ORDERED this 29th day of August, 2007.



Janis Graham Jack
United States District Judge